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EXCEPTION

BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK

Chairman

JIM IRVIN

Commissioner

WILLIAM A. MUNDELL

Commissioner

AZ CORP COMMISSION
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IN THE MATTER OF THE)
 COMPETITION IN THE PROVISION)
 OF ELECTRIC SERVICES THROUGHOUT)
 THE STATE OF ARIZONA)

DOCKET NO. RE-00000C-94-0165

**EXCEPTIONS OF ARIZONA PUBLIC SERVICE COMPANY
 TO RECOMMENDED ORDER ADOPTING THE ELECTRIC COMPETITION
 RULES, A.A.C. R14-2-1601 *ET SEQ.***

Arizona Public Service Company ("APS" or "Company") submits the following exceptions to the Hearing Officers' August 26, 1999 Recommended Order. That Recommended Order proposes to adopt, with some modifications, the revised Electric Competition Rules that were published in the Arizona Administrative Register on May 14, 1999 ("Revised Rules").

I.

INTRODUCTION

Since 1996, APS has been working closely with the Arizona Corporation Commission ("Commission") and other interested parties to adopt fair, reasonable, and effective rules governing retail electric competition. APS has been involved in every one of the Commission's competition-related working groups, and has extensively commented on each draft of the Electric Competition Rules. The rule-making process now appears to be

Arizona Corporation Commission

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1 reaching final closure. APS, and many other stakeholders, stand ready to begin retail
2 competition and work through the various issues and problems that will inevitably arise
3 during the implementation of Direct Access.

4 The Commission's consideration of this Recommended Order and the Revised Rules,
5 as modified therein, is thus in many respects the Commission's last opportunity to correct
6 several failings in the Revised Rules that will harm the process of competition, and that will
7 unnecessarily burden or penalize a number of market participants and consumers. APS has
8 pointed out many of these failings before, and has yet to hear a persuasive argument in
9 response. APS' proposed solutions to the failings in the Revised Rules are fair and
10 reasonable, and will help smooth the transition to a competitive marketplace.

11 Accordingly, in these exceptions, APS asks the Commission to:

- 12 • Clarify the definition of "Competitive Services" in R14-2-1601(7) (page 3);
- 13 • Allow more meaningful unbundling, when warranted, in R14-2-1606 and -1612
14 (page 5);
- 15 • Allow reasonable special contracts and tariff conditions of service in R14-2-1606
16 (page 8);
- 17 • Address the unfair exemption of electric cooperatives from parts of the Rules in
18 R14-2-1603, -1605, and -1615 (page 9).
- 19 • Modify R14-2-1615 to permit UDCs to offer metering and meter reading to
20 competitive customers (page 10);
- 21 • Remove the complete exclusion of "Public Power Entities" from the in-state
22 reciprocity requirements of R14-2-1610 (page 12);
- 23 • Expand the reach of the Code of Conduct requirements in R14-2-1616 (page 13);
- 24 • Modify certain provisions in R14-2-1609 regarding transmission (page 14);
- 25 • Revise the information disclosure requirements in R14-2-1617 (page 15);
- 26 • Clarify the power procurement standards for Standard Offer service in R14-2-
1606(B) (page 16);

- 1 • Consider whether the Rules should be submitted to the Attorney General for
- 2 review pursuant to A.R.S. § 41-1044(A) (page 17); and
- 3 • Clarify that all Self-Aggregators must purchase power from an ESP (page 18).

4 APS urges the Commission to carefully consider these exceptions and suggested solutions,
5 and modify the Recommended Order accordingly. To facilitate this, APS has attached its
6 proposed modifications to the Rules, in red-line form, as Exhibit A.

8 II.

9 DEFINITION OF “COMPETITIVE SERVICES”

10 Perhaps the most serious flaw in the Revised Rules involves the definition of
11 “Competitive Services.” Revised Rule R14-2-1601(7)¹ defines “Competitive Services” as:

12 [A]ll aspects of retail electric service except those services specifically defined
13 as “Noncompetitive Services” pursuant to R14-2-1601(27) or noncompetitive
services as defined by the Federal Regulatory Energy Commission.

14 (Emphasis added.) The term “retail electric service” is not defined at all in the Revised
15 Rules. The term “Noncompetitive Services” is defined to include only six narrowly-defined
16 services: (1) distribution service, (2) Standard Offer service, (3) transmission and ancillary
17 services, (4) must-run generation, (5) the provision of customer “demand and energy data”
18 to ESPs, and (6) those aspects of metering service appearing in R14-2-1612(K).

19 The significance of this definitional issue is highlighted by the separation
20 requirements in R14-2-1615. That provision prohibits an Affected Utility or UDC from
21 providing any “Competitive Services” after January 1, 2001. But because the definition of
22 “Competitive Services” is overly-vague and defined simply by a negative reference to
23 another definition, no Affected Utility or UDC will really know what services could
24 potentially be labeled a “Competitive Service.”

25 ¹ The modifications to the Revised Rules proposed in the Recommended Order renumber the provision defining
26 “Competitive Services” from R14-2-1601(5) to R14-2-1601(7).

1 In its Comments to the Revised Rules, Staff claimed that APS' suggested
2 modification to Rule R14-2-1601(5) proposed a third type of retail services: "Competitive
3 Services that could be offered by UDCs." To Staff, the distinction between Competitive and
4 Noncompetitive Services is apparently clear and unambiguous. The Recommended Order
5 adopts Staff's logic, and claims that APS' proposed change to the definition of "Competitive
6 Services" could "narrow the competitive environment by excluding other energy-related
7 services."

8 APS does not understand how clearly defining a critical term will "narrow the
9 competitive environment." This, however, is not a debate over meaningless semantics—
10 there are practical consequences. For example, APS currently has in place a number of
11 energy and demand side management ("DSM") and renewable energy programs (e.g., the
12 Solar Partners program). APS also provides energy audits for customers concerned with
13 their energy consumption patterns or levels of energy usage. These are at least arguably
14 "aspects of retail electric service," but are not defined as part of Standard Offer service in
15 R14-2-1601(38). Thus, the Revised Rules appear to prohibit any Affected Utility from
16 providing its customers with any of these services—a restriction that APS does not believe
17 the Commission desires or had anticipated with the proposed definition of Competitive
18 Services. The same outcome potentially results for numerous other "aspects" of retail
19 electric service that did not happen to be included in the definition of "Noncompetitive
20 Services."²

21 As these illustrations make clear, APS is not attempting to define a "third category"
22 of services. It is attempting to correct an overly-vague definition in the Revised Rules that

23 ² This Rulemaking does not include Rule R14-2-213 (Conservation). However, if the definition of Competitive
24 Services is not changed, the Commission should prepare a Notice of Proposed Rulemaking to repeal or amend that rule.
25 Affected Utilities and UDCs will not be textually permitted to "[develop] consumer education and assistance programs
26 to aid the populace in reducing energy consumption and cost," or "[participate] in various energy conservation programs
sponsored by other municipal, state or federal government entities having such jurisdiction." Thus, filing annual plans
for these undertakings will be meaningless.

1 affects existing, long-established services. Accordingly, APS urges the Commission to
2 adopt an unambiguous definition of Competitive Services as follows:

- 3 7. "Competitive Services" means retail electric Generation, Meter Service
4 (other than those aspects of Meter Service described in R14-2-
5 1612(K)), Meter Reading Service, and billing and collection for such
6 services (other than joint or consolidated billing provided pursuant to a
7 tariff). It does not include Standard Offer service or any other electric
8 service defined by this Article as noncompetitive.

9 Such a clear definition will: (1) prevent unintended consequences when necessary or
10 important services not specifically defined as "Noncompetitive Services" can no longer be
11 provided to anyone by Affected Utilities or UDCs; and (2) prevent "rule by waiver" where a
12 line of UDCs forms outside the Commission's doors to seek waiver after waiver, for service
13 after service.

14 III.

15 UNBUNDLING REQUIREMENTS

16 The Recommended Order proposes further changes to the rate unbundling and
17 unbundled billing requirements in Rules R14-2-1606 and R14-2-1612(N). Part of the
18 analysis in the Concise Explanatory Statement ("CES") correctly points out that "Standard
19 Offer tariffs must be unbundled in a manner that permits a meaningful comparison for
20 consumers but [must] not be cost prohibitive." APS is concerned that the modifications to
21 Rule R14-2-1606(C) are moving even closer to the latter, and still do not ensure that
22 customers receive the information necessary to effectively consider their competitive
23 options.

24 For example, the Revised Rules now require a calculation of "generation-related"
25 billing costs and "distribution-related" billing and collection costs. APS has neither heard of
26 such a category of costs nor seen any definition of what they are even supposed to
encompass. Although there may be a method to allocate, based on some apportionment
analysis, billing between "generation" and "distribution," this exercise would be

1 meaningless. Customers will receive a billing credit if they opt for Direct Access that
2 depends at least partly on the billing options used by the UDC and ESP. Thus, displaying
3 on the Standard Offer bill some allocation analysis of these costs that cannot correlate with
4 the credit gives no meaningful information to a customer. Moreover, customers will likely
5 not understand why they have “two charges” for billing—one for generation and one for
6 distribution—but only one Standard Offer bill. This added complexity and confusion is
7 precisely what the Commission should seek to avoid.

8 Additionally, the unbundling now includes “optional” ancillary services (in the
9 Competitive Services category) and “required” ancillary services (in the Noncompetitive
10 Services category). How are UDCs to respond to customers who, seeing an entry for
11 “optional” ancillary services” on their bill, ask to stay on Standard Offer service but without
12 these “frills?” Also, does the Rule require separate cost displays for each of the four
13 “required” ancillary services, or for the transaction costs and line losses associated with
14 generation? To the vast majority of customers, this unnecessary detail will merely result in
15 frustration. Such detail will not make bills or the unbundling process comprehensible. To
16 Affected Utilities, however, it adds very significant administrative burdens and cost.

17 In the past, Staff and other proponents of rate disaggregation “ad absurdum” have
18 claimed that customers want and need all of this information. They cite no surveys or even
19 anecdotal evidence to support these claims. New West Energy’s (“NWE”) parent, Salt
20 River Project (“SRP”), certainly has not found this micro-unbundling necessary. In fact,
21 NWE did not even suggest such an unbundling during the SRP restructuring process. APS
22 is presently conducting focus groups to determine what information customers actually do
23 want to make their competitive energy choices, and what is just confusing clutter on the bill.
24 The Company will share this data with the Commission as soon as it is available.

25 To further complicate matters, the Stranded Cost/Unbundling Settlements that have
26 so far been presented at hearings amply illustrate that unbundling methods will differ based
on the circumstances presented by each Affected Utility. For example, in TEP’s case, there

1 will probably be both a fixed and floating Competitive Transition Charge (“CTC”), based on
2 an explicit Market Generation Credit with an “adder.” In APS’ case, there is only a fixed
3 CTC, and APS’ unbundling is done not with a explicit “market credit” for generation, but by
4 performing a bottom up calculation of distribution and other regulated rates. Any
5 “generation credit” is only implicit—i.e., it is a “fall-out” number determined separately for
6 each bill. Also, TEP does not have to collapse multiple Standard Offer tariffs into a single
7 Direct Access tariff; APS does. Indeed, it is impossible in a Direct Access tariff for APS to
8 “calculate the [unbundled items] on the same basis as those items are calculated in the
9 Standard Offer tariff” because there is more than one associated Standard Offer tariff.

10 In an ideal world—and perhaps following UDC rate cases proposed for the future—
11 at least some of the unbundled elements now proposed in the Revised Rules could be
12 determined and stated. But given the historic rate design and structure that each Affected
13 Utility brings to the start of competition, such uniformity is not possible today. Thus, in the
14 CES, the Hearing Officers conclude that Affected Utilities can seek waivers from these
15 requirements, if necessary. As argued above, however, asking every Affected Utility to file
16 for waivers makes a so-called uniform rule a pointless exercise in the first place.

17 Unbundling will differ between Affected Utilities. Moreover, much of the specific
18 detail required by the Rules cannot be meaningfully determined outside of a full rate case
19 and, in any event, will not provide customers with useful or helpful information. The
20 solution is to state in Rule R14-2-1606(C) that Affected Utilities may file an alternate plan
21 for unbundling and unbundled billing if warranted. The Commission can then determine
22 whether an Affected Utility’s plan could better inform customers, or more accurately
23 convey useful information, than the proposed Rules.

IV.

**PROHIBITION OF SPECIAL CONTRACTS AND
TARIFF CONDITIONS OF SERVICE**

Revised Rule R14-2-1606(C) currently prohibits special discounts or “contracts of term” for Standard Offer customers.³ APS previously proposed eliminating this provision, or at least limiting it to customers that are below 100,000 kWh annual consumption (i.e., customers for whom APS has a Provider of Last Resort obligation). The Recommended Order rejected APS’ proposal because it would somehow “prevent” Standard Offer customers from accessing a competitive option.

The Commission, however, has long recognized that large customers often present issues that cannot be adequately addressed in a general tariff. For example, the profile of their energy usage may justify a reasonable “discount” to reflect avoided costs. Retention of the customer by the UDC under such circumstances benefits all of its other customers, including Direct Access customers. As Staff noted, Economic Development Tariffs that attract industry to the state can also provide benefits to consumers. Further, the customers that traditionally avail themselves of special contracts are large and sophisticated—they are fully able to assess the risks and benefits all provisions in such contracts.

In a competitive environment, however, these large customers could also impose undue burdens on a UDC and existing Standard Offer customers by significantly changing the UDC’s load requirements. For example, a 5 MW customer returning to Standard Offer forces the UDC to obtain an additional 5 MW of generation on the open market. How this additional generation is acquired is largely determined by how long and at what load factor the purchase is to be made. Additionally, when procuring generation the UDC must use risk management tools—such as energy futures or in-kind exchanges. Further, pricing issues are

³ The Rules do not define “contracts for term.” For example, some of APS’ existing standard tariffs require minimum terms of one year. See, for example, E-34.

1 accentuated by the season in which the energy is being obtained. All of these factors require
2 some certainty of when large loads will come on and leave a UDC's system.

3 In the Recommended Order on the Company's Settlement Agreement, it is suggested
4 that APS must allow large customers to return from Direct Access to Standard Offer "if the
5 customer pays for additional costs it has caused." Recommended Order in Docket E-
6 01345A-98-0473, et al., at p. 7, l. 26 – p. 8, l. 1. Such an instruction will prove impossible
7 to implement without a special contract.

8 Additionally, some limitations on customers switching back-and-forth between
9 Standard Offer service and Direct Access are necessary to prevent "gaming" the system.
10 For example, without some limitations in a contract or tariff, a customer could switch to
11 Direct Access during the relatively low-cost Winter season and revert to the Standard Offer
12 in the higher-cost Summer season. Seasonal gaming can impose significant burdens on other
13 Standard Offer customers.

14 To allow a UDC to reasonably address these situations, APS recommends deleting
15 Revised Rule R14-2-1606(C). Moreover, in all cases, as is true today, the Commission
16 ultimately retains the authority to determine whether such contracts or conditions are
17 reasonable and appropriate.

18 V.

19 COOPERATIVES' EXEMPTIONS FOR COMPETITIVE SERVICES

20 Several provisions in Revised Rules R14-1603(A), R14-2-1605, and R14-2-1615
21 exempt electric cooperatives from the requirement that Competitive Services assets be
22 divested and from the prohibition against directly offering Competitive Services after
23 January 1, 2001. However, treating these UDCs in fundamentally different ways when
24 applying the separation requirements, particularly given the Revised Rules' overly-broad
25 definition of Competitive Services, is unwarranted discrimination, no matter what
26 justification is attempted.

1 For example, the exemption in R14-2-1615(C) permits electric cooperatives to
2 provide Metering and Meter Reading services to competitive customers within their service
3 territories. APS has repeatedly argued that allowing UDCs to provide such services is a
4 logical and economically-efficient alternative for customers and ESPs. The Commission,
5 however, has rejected these arguments because of a perceived need to artificially develop a
6 market for providing such services, no matter what the cost. The exemption of cooperatives
7 from these requirements, without allowing other UDCs to also provide such services, is
8 inconsistent with that same policy analysis. Indeed, from a service standpoint, the
9 exemption of electric cooperatives from the separation requirements in R14-2-1615
10 essentially narrows the list of “Affected Utilities” to three: APS, TEP, and Citizens.

11 The Revised Rules should not treat UDCs in fundamentally different ways, such as
12 allowing only electric cooperatives to provide Competitive Services after 2001. The
13 Commission should change the underlying separation rules, rather than implement an unfair,
14 piecemeal approach through waivers and exceptions in the Rules aimed at limiting their
15 scope.

16 VI.

17 SEPARATION OF REVENUE CYCLE SERVICES

18 As noted above, Rule R14-2-1615 requires APS, TEP and Citizens to separate not
19 only competitive generation assets, but all Competitive Services assets. The forced
20 separation of distribution-related services such as metering and meter reading (termed
21 “revenue cycle services”) will introduce unnecessary inefficiencies into the transition to
22 retail competition—this requirement will hurt, not help, customers.

23 Specifically, in the free market, a competitor should only provide a service if it can
24 meet or beat the price of that service when offered by another—in this case, by a UDC. A
25 UDC will, most likely, have legitimate economies of scale relating to revenue cycle services
26 for some customers. Competitors without similar economies of scale are not eliminated

1 from the marketplace. Instead, they must simply develop innovative approaches to
2 profitably obtain customers, such as : (1) bundling additional value-added services to the
3 metering or meter reading service; (2) implementing lower-cost technologies, including
4 automated meter reading; or (3) centralizing operations across a region or focusing on
5 specific sub-markets. It is this process that results in benefits to customers and long-term
6 gains in efficiency.

7 On the other hand, a number of parties (including metering and meter reading
8 vendors) have argued that allowing APS or other UDCs to offer revenue cycle services
9 would hinder the development of a competitive market. These parties advocate requiring
10 Direct Access customers to obtain revenue cycle services from less-efficient, higher-cost
11 suppliers of these services. Although such an approach may subsidize a vendor of metering
12 or meter-reading services, it will not result in an incentive for providers of revenue cycle
13 services to offer the most efficient service possible. Indeed, if providers of revenue cycle
14 services refuse to offer reasonably priced service in places such as Snowflake, Winslow or
15 Tuba City, prohibiting UDCs from providing revenue cycle services may deny customers in
16 these areas an opportunity to participate in Direct Access altogether.

17 Further, divestiture to an affiliate of the potentially competitive portion of an
18 Affected Utility's metering function is not a practical alternative. This would simply
19 destroy existing economies of scale and result in higher prices to Standard Offer customers
20 without producing corresponding benefits to Direct Access customers.

21 APS thus recommends that Revised Rule R14-2-1615 be amended to allow UDCs to
22 offer metering and meter reading to Direct Access customers and ESPs without being
23 required to divest such services. APS's proposed modifications to the Revised Rule are set
24 forth in Exhibit A.

VII.

PUBLIC POWER ENTITIES

The Hearing Officers' proposed modifications to the Revised Rules change the definition of "Public Power Entity" to match it with the corresponding definition used in House Bill 2663. That definition essentially limits the scope of Public Power Entities to reach only SRP. APS does not object to conforming the definition, but this highlights problems in Rule R14-2-1610, dealing with in-state reciprocity, that the Commission should address here.

The Revised Rules propose excluding all "Public Power Entities" (i.e., SRP) from the reciprocity requirement in Rule R14-2-1610(E). That rule prohibits an affiliate of a Public Power Entity (such as NWE for SRP) from competing in the service territory of an Affected Utility until the parent Public Power Entity certifies that it will open its service territory to competition in a manner similar to that provided for in the Commission's Rules, and the Commission makes a finding to that effect.

There is no reason to exempt SRP from this requirement. The reciprocity provision is appropriate to ensure that a self-governing municipal utility has legitimately opened its service territory to competition. Moreover, by requiring that a Public Power Entity's service territory be opened in a manner consistent with the Rules, this requirement helps ensure that the competitive playing field is at least reasonably level. Indeed, SRP sought an exclusion in Rule R14-2-1610 because it could not meet this reasonable requirement of reciprocity. Accordingly, APS proposes deleting the carve-out of "Public Power Entit[ies]" in Revised Rule R14-2-1610(E).

VIII.

CODE OF CONDUCT

In a modification to Revised Rule R14-2-1616, the Hearing Officers have incorporated eight subject areas that all Codes of Conduct must address. APS does not object to addressing these eight subject areas in its Code of Conduct, so long as all similarly situated parties are also required to comply. The Commission should, however, address two aspects of the proposed rule unrelated to the specific elements of a Code of Conduct.

First, a modification to the Revised Rule made in the Recommended Order would require all Codes of Conduct to be approved by the Commission after a hearing. Although the Commission may determine that hearings are appropriate in some (or perhaps even most) cases, APS does not believe that the Rules should require hearings on all Codes of Conduct, and arguably on all proposed modifications to such Codes of Conduct. By specifying in a rule that a hearing is required, the Commission unnecessarily limits its options for addressing Code of Conduct issues.

Second, the Commission should broaden the Code of Conduct requirement in Rule R14-2-1616 to reach ESPs that are affiliated with regulated electric utilities or with vertically-integrated utilities such as SRP. The Commission has recognized, when granting competitive CC&Ns to ESPs, that cross-subsidization is a problem even where a regulated affiliate of an ESP is located out-of-state. Thus, there is no reason to exempt affiliates of out-of-state regulated utilities or of Public Power Entities such as SRP from the same Code of Conduct requirements set forth in Rule R14-2-1616. By doing so, the Commission takes a significant step in leveling the playing field and not unreasonably discriminating against Affected Utilities.

IX.

TRANSMISSION ISSUES

The Commission must modify several provisions in Revised Rule R14-2-1609, which addresses transmission issues. First, APS previously argued that requiring UDCs to “assure . . . adequate transmission import capability” was both flawed policy and violated the exclusive jurisdiction of FERC over transmission issues. In the Recommended Order, the Hearing Officers erroneously rejected these arguments.

APS acknowledges that it must maintain sufficient distribution capability to meet the needs of its customers. However, the Commission unambiguously violates FERC’s jurisdiction by requiring APS and other UDCs to guarantee that all distribution customers “have [transmission] access to generation provided by the certificated ESP of their choice.” Indeed, such an assertion directly contradicts FERC’s existing Open Access policy established in Order 888. This is because the only way the Affected Utility can guarantee such unfettered access (without building a grossly redundant system) is to grant ESPs priority access over all other users of the transmission system, including native load customers. Contrary to the discussion in the Recommended Order, ESPs are subject to the same requirements as other users of interstate transmission capacity.

Moreover, as a policy matter, requiring the UDC to guarantee sufficient transmission import capability eliminates market forces in the siting of generation. Without the requirement in Rule R14-2-1609(B), competitors will site generation facilities in a manner that considers the existing constraints on transmission access and leads to an efficient outcome. If, however, the cost of transmission constraints is removed and placed on the UDC, there is no economic incentive to promote siting generation in the most efficient location. Thus, as APS has noted before, Revised Rule R14-2-1609(B) masks market forces and should be deleted for policy reasons, as well as for transgressing the exclusive jurisdiction of FERC.

1 As to Rule R14-2-1609(G), both Staff and the Hearing Officers agree that the timely
2 recovery by Affected Utilities of the costs to establish AISA or an ISO is a “reasonable
3 expectation.” That said, the Recommended Order refused to expressly recognize this
4 conclusion by conforming the Proposed Rule, which currently states: “[If FERC does not
5 address cost recovery,] the Commission may authorize Affected Utilities to recover such
6 costs through a distribution surcharge.” (Emphasis added.) Given the common meaning of
7 the word “may,” such an “assurance” of cost recovery is meaningless. If there is no
8 argument that Affected Utilities should recover the costs of implementing AISA or an ISO,
9 there is no reason to waffle in the language of the Rule. Rather than risk another debate
10 several years from now over whether Affected Utilities are entitled to recover then-
11 expended costs associated with AISA/ISO, APS urges the Commission to clarify the Rule
12 now. APS’ proposed modification appears in Exhibit A.

13 X.

14 INFORMATION DISCLOSURE REQUIREMENTS

15 Revised Rule R14-2-1617 requires all “Load-Serving Entit[ies],” including UDCs
16 providing Standard Offer service, to disclose detailed information about pricing and terms
17 of service. The avowed purpose of this rule is to allow customers to make “comparisons”
18 among offers of competitive providers. *See* R14-2-1617(C). This, however, is also the
19 purpose of unbundled Standard Offer bills. Thus, requiring UDCs to comply with the
20 duplicative disclosure obligations of this Rule for Standard Offer customers is unnecessarily
21 burdensome and will increase costs to Standard Offer customers.
22

23 Additionally, APS already provides an in-state customer service number on its bills.
24 APS’ terms and conditions of Standard Offer service are established by tariffs, which are
25 publicly available, and do not vary between customers within a class. Moreover, much of
26 the required information is not applicable to Standard Offer customers, such as the price
variability or time period data required in R14-2-1617(A). All of these reasons illustrate

1 why—although perhaps desirable for “unregulated” services by ESPs that may vary
2 customer-to-customer—affirmative disclosure obligations should not apply for Standard
3 Offer customers. Similarly, because the disclosure requirements discussed above are
4 unnecessary for default Standard Offer service, the corresponding provisions in Rule R14-2-
5 1617(C), (D), and (F) should likewise exclude UDCs providing Standard Offer service.

6 Accordingly, APS recommends that the term “Load-Serving Entity” in Rule R14-2-
7 1617(A), (C)-(D), and (F) be replaced with the term “load-serving ESP.” APS does not
8 already provide generation resource portfolio information, so does not ask the Commission
9 to change Rule R14-2-1617(B). However, APS does recommend deleting the words “and
10 its affiliates” from Rule R14-2-1617(E) because that term appears overly-broad. For
11 example, APS would not have access to APS Energy Service’s generation resource
12 portfolio, and in any event, disclosing such affiliate information to Standard Offer customers
13 could mislead customers as to the relationship between the companies.

14 XI.

15 POWER PROCUREMENT FOR STANDARD OFFER SERVICE

16 Revised Rule R14-2-1606(B) requires that after January 1, 2001, a UDC must
17 provide Standard Offer service by purchasing power on the open market. That simple
18 concept, however, has apparently engendered unnecessary controversy. Attempting to
19 resolve that controversy, the Hearing Officers changed R14-2-1606(B) from requiring
20 purchases of power in the open market to purchasing power in an open transaction. APS
21 does not believe that the latter is either intentional or desirable.

22 Specifically, the Hearing Officers stated that their intent was simply to clarify the
23 term “open market” and that they “[did] not wish to impose the constraints on energy
24 procurement that would be associated with a competitive bid process.” Although APS
25 applauds the Hearing Officers’ efforts to keep the procurement burden manageable, the
26 wording change to an “open” transaction may be more restrictive than a competitive bid

1 requirement. If interpreted literally, an “open” transaction requirement could preclude APS
2 from soliciting bids from suppliers that do not want their bids disclosed prior to a sale.
3 Indeed, one could argue that a supplier would have to disclose all bids to all its competitors
4 prior to acceptance under the proposed modification to this Rule. If this results, few
5 suppliers may elect to even bid for APS’ Standard Offer requirements.

6 Rather than introduce additional ambiguity through terms that restrict the ability of a
7 UDC to effectively procure power for Standard Offer service, APS recommends revising the
8 modification of R14-2-1616(B) to read: “[power for] Standard Offer service shall be
9 acquired from the competitive market through prudent, arm’s-length transactions.”
10

11 XII.

12 ATTORNEY GENERAL REVIEW OF THE REVISED RULES

13 The Recommended Order does not address whether the Commission will seek
14 Attorney General review of the Revised Rules pursuant to A.R.S. § 41-1044(A). In U S
15 West v. Arizona Corporation Commission, 295 Ariz. Adv. Rep. 41 (Ct. App., May 18,
16 1999), the Arizona Court of Appeals invalidated several Commission rules relating to
17 competition in telecommunications. Rejecting the Commission’s contention that the rules
18 were “related to ratemaking,” the Court concluded that rules regarding CC&N issuance,
19 equal access, interconnection, quality of service, and administrative obligations were not
20 “related to ratemaking.” Thus, those particular rules were declared invalid.

21 In light of the U S West decision, the Commission should determine whether it is
22 appropriate to submit the Revised Rules to the Attorney General for certification pursuant to
23 A.R.S. § 41-1044. APS (and probably most other parties to this proceeding) would prefer to
24 avoid any delay and corresponding confusion should parts of the Revised Rules be
25 successfully challenged for failing to comply with this administrative requirement.
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XIII.

SELF-AGGREGATION

Although APS does not believe that the definition of “self-aggregator” is particularly necessary,⁴ APS does not oppose Staff’s recommended amendment in this regard. APS’ concern regarding self-aggregation is that there not be a loophole that would allow an aggregating group of customers to by-pass the reciprocity provisions of Rule R14-2-1610 by “self-aggregating” and then purchasing power from a non-ESP. Staff’s proposal involved adding clarifying language to both Rule R14-2-1604(A)(4) and (B)(6) expressly stating that self-aggregators must purchase power through an ESP. The Hearing Officers accepted Staff’s argument, but did not include the added language to Rule R14-2-1604(B)(6), believing that doing so would be redundant. APS does not believe the language is redundant, because the limitation in (A)(4) arguably applies only to customers eligible for self-aggregation after January 1, 2001. Thus, APS recommends that the Commission reinsert Staff’s language in R14-2-1604(B)(6) to clarify that the rule also applies to customers self-aggregating before January 1, 2001.

XIV.

CONCLUSION

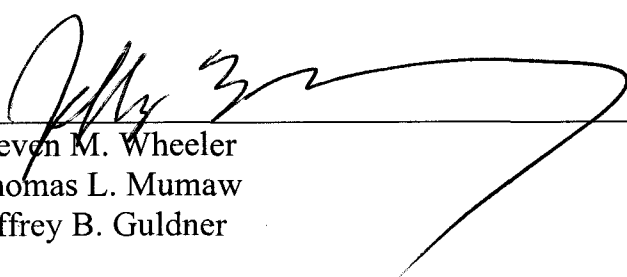
APS urges the Commission to carefully consider the modifications suggested by the Company in these exceptions. As noted above, this represents the last opportunity to avoid the unintended consequences and unreasonable results that will arise if the concerns identified in these exceptions are not addressed. At the very least, APS’ proposed changes will avoid an ever-increasing series of individual requests for waivers or interpretations of the Rules. APS does not propose sweeping revisions to the Rules. Rather, APS proposes

⁴ The type of customer self-aggregation discussed in Staff’s amendment always was permitted by the Rules and never required a CC&N. This was because the self-aggregated load would be served by a certificated ESP.

1 modifications that, if adopted, will make the Electric Competition Rules more effective in
2 implementing retail competition in Arizona.

3 RESPECTFULLY SUBMITTED this 7th day of September, 1999.

4 SNELL & WILMER L.L.P.

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6 
7 Steven M. Wheeler
8 Thomas L. Mumaw
9 Jeffrey B. Guldner

10 Attorneys for Arizona Public Service Company
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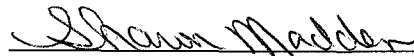
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CERTIFICATE OF SERVICE

The original and ten (10) copies of the foregoing document were filed with the Arizona Corporation Commission on this 7th day of September, 1999, and service was completed by mailing or hand-delivering a copy of the foregoing document this 7th day of September, 1999 to the accompanying service list.



Sharon Madden

712120.01

Exhibit A

Arizona Public Service Company

Exceptions to Recommended Order Adopting the Electric Competition Rules

Exhibit A

R14-2-1601

5. "Competitive Services" means retail electric Generation, Meter Service (other than those aspects of Meter Service described in R14-2-1612(K)), Meter Reading Service, and billing and collection for such services (other than joint or consolidated billing provided pursuant to a tariff). It does not include Standard Offer Service or any other electric service defined by this article as noncompetitive. ~~all aspects of retail electric service except those services specifically defined as "Noncompetitive Services" pursuant to R14-2-1601(27) or noncompetitive services as defined by the Federal Energy Regulatory Commission.~~

R14-2-1604

B.

6. Aggregation and Self-Aggregation of residential customers is allowed subject to the limitations of the phase-in percentages in this rule. These customers must purchase their electricity and related services from a certificated Electric Service Provider as provided for in these Rules.

R14-2-1606

B. After January 1, 2001, power purchased by an investor owned Utility Distribution Company to provide Standard Offer service shall be acquired from the competitive market through prudent, arm's-length transactions~~through an open, fair and arm's length transaction with prudent management of market risks, including management of price fluctuations.~~

C. Standard Offer Tariffs

1. By the July 1, 1999, or pursuant to Commission Order, whichever occurs first, each Affected Utility shall file proposed tariffs to provide Standard Offer Service. Such rates shall not become effective until approved by the Commission. Any rate increase proposed by an Affected Utility or Utility Distribution Company for Standard Offer Service must be fully justified through a rate case proceeding.
2. Standard Offer Service tariffs shall include the following elements, each of which shall be clearly unbundled and identified in the filed tariffs:
 - a. Competitive Services:
 - (1) Generation, which shall include all transaction costs and line losses;
 - (2) Competition Transition Charge, which shall include recovery of generation related regulatory assets;
 - (3) Generation-related billing and collection;
 - (4) Transmission Services;
 - (5) Metering Services;
 - (6) Meter Reading Services; and

- (7) Optional Ancillary Services, which shall include spinning reserve service, supplemental reserve, regulation and frequency response service, and energy imbalance service.

b. Non-Competitive Services:

- (1) Distribution services
- (2) Required Ancillary services, which shall include scheduling, system control and dispatch service, and reactive supply and voltage control from generation sources service;
- (3) Must-Run Generating Units;
- (4) System Benefits Charges; and
- (5) Distribution-related billing and collection.

3. Affected Utilities and Utility Distribution Companies may file proposed revisions to such rates. Any rate increase proposed by an Affected Utility or Utility Distribution Company for Standard Offer Service must be fully justified through a rate case proceeding, which may be expedited at the discretion of the Utilities Division Director.
4. Such rates shall reflect the costs of providing the service.
5. Consumers receiving Standard Offer service are eligible for potential future rate reductions as authorized by the Commission.
6. An Affected Utility may submit for Commission approval an alternative plan for unbundling Standard Offer Service that varies from the requirements of this section, provided that the alternative plan does not seek a rate increase and the reasons justifying an alternative Standard Offer Service unbundling methodology are

substantiated by the Affected Utility.

- ~~6. After January 1, 2001, tariffs for Standard Offer Service shall not include any special discounts or contracts with term, or any tariff which prevents the customer from accessing a competitive option, other than time of use rates, interruptible rates or self generation deferral rates.~~

R14-2-1609 Transmission and Distribution Access

- B. ~~Until such time that the transmission planning process mandated by R14 2-1609(D)(5) is fully implemented, or until such time as a FERC approved and operational Independent System Operator assumes the obligations of the AISA as contemplated by R14 2-1609(F), Utility Distribution Companies shall retain the obligation to assure that adequate transmission import capability is available to meet the load requirements of all distribution customers within their service areas.~~ Utility Distribution Companies shall retain the obligation to assure that adequate distribution system capacity is available to meet the load requirements of all distribution customers within their service areas.

* * *

- G. It is the intent of the Commission that prudently-incurred costs incurred by the Affected Utilities in the establishment and operation of the Arizona Independent Scheduling Administrator, and subsequently the Independent System Operator, should be recovered from customers using the transmission system, including the Affected Utilities' wholesale customers, Standard Offer retail customers, and competitive retail customers on a non-discriminatory basis through Federal Energy Regulatory Commission-regulated prices. Proposed rates for the recovery of such costs shall be filed with the Federal Energy Regulatory Commission and this Commission. In the event that the Federal Energy Regulatory Commission does not permit recovery of prudently incurred Independent Scheduling Administrator costs within 90 days of the date of making an application with the Federal Energy Regulatory Commission, the Commission ~~may~~will authorize Affected Utilities to recover such costs through a distribution surcharge.

R14-2-1610

- E.** An affiliate of an Arizona electric utility which is not an Affected Utility ~~or a~~
~~Public Power Entity~~ shall not be allowed to compete in the service territories of
Affected Utilities unless the affiliate's parent company, the non-affected electric
utility, submits a statement to the Commission indicating that the parent company
will voluntarily open its service territory for competing sellers in a manner similar
to the provisions of this Article and the Commission makes a finding to that
effect.

R14-2-1612

N. Billing Elements. After the commencement of competition within a service territory pursuant to R14-2-1602 and unless otherwise authorized by the Commission, all customer bills, including bills for Standard Offer Service customers within that service territory, will list, at a minimum, the following billing cost elements:

R14-2-1615

A. All competitive generation assets ~~and Competitive Services~~ shall be separated from an Affected Utility prior to January 1, 2001. Such separation shall either be to an unaffiliated party or to a separate corporate affiliate or affiliates. If an Affected Utility chooses to transfer its competitive generation assets ~~or competitive services~~ to a competitive electric affiliate, such transfer shall be at a value determined by the Commission to be fair and reasonable.

B. Affected Utilities or Utility Distribution Companies may, at their option, provide non-generation Competitive Services directly or through an affiliate. If an Affected Utility or Utility Distribution Company chooses to provide non-generation Competitive Services directly, the Affected Utility or Utility Distribution Company shall separately account for such Competitive Services.

CB. Beginning January 1, 2001, an Affected Utility or Utility Distribution Company shall not provide ~~Competitive Services as defined in R14-2-1601~~competitive retail Generation as defined in R14-2-1601(16), except as otherwise authorized by these rules or by the Commission.

1. ~~This Section does not preclude an Affected Utility or Utility Distribution Company from billing its own customers for distribution service, or from providing billing services to Electric Service Providers in conjunction with its own billing, or from providing Meter Services or Meter Reading Services for Load Profiled residential customers. Nor does this section preclude an Affected Utility or Utility Distribution Company from providing billing and collections, Metering and Meter Reading Service as part of the Standard Offer Service tariff to Standard Offer Service Customers.~~

2. ~~This Section does not preclude an Affected Utility or Utility Distribution Company from owning distribution and transmission primary voltage~~

~~Current Transformers and Potential Transformers.~~

~~C. An Electric Distribution Cooperative is not subject to the provisions of R14 2-1615 unless it offers competitive electric services outside of its distribution service territory.~~

R14-2-1616

A. No later than 90 days after adoption of these Rules, each Affected Utility which plans to offer Noncompetitive Services and which plans to offer Competitive Services through its competitive electric affiliate shall propose a Code of Conduct to prevent anti-competitive activities. Each Electric Service Provider affiliated with an electric utility that provides, in any jurisdiction, services that would be considered Noncompetitive Services under these Rules shall also propose a Code of Conduct to prevent anti-competitive activities. Each Affected Utility that is an electric cooperative, that plans to offer Competitive Services, shall also submit a Code of Conduct to prevent anti-competitive activities. All Codes of Conduct shall be subject to Commission approval ~~after a hearing.~~

R14-2-1617 Disclosure of Information

A. Each load serving ESP ~~Load Serving Entity providing either generation service or Standard Offer Service~~ shall prepare a consumer information label that sets forth the following information:

1. Price to be charged for generation services,
2. Price variability information,
3. Customer service information,
4. Time period to which the reported information applies.

* * *

C. The Director, Utilities Division shall develop the format and reporting requirements for the consumer information label to ensure that the information is appropriately and accurately reported and to ensure that customers can use the labels for comparisons among ~~Load Serving Entities~~ load serving ESPs. The format developed by the Director, Utilities Division shall be used by each ~~Load Serving Entity~~ load serving ESP.

D. Each ~~Load Serving Entity~~ load serving ESP shall include the information disclosure label in a prominent position in all written marketing materials specifically targeted to Arizona. When a load serving ESP ~~Load Serving Entity~~ advertises in non-print media, or in written materials not specifically targeted to Arizona, the marketing materials shall indicate that the ~~Load Serving Entity~~ load serving ESP shall provide the consumer information label to the public upon request.

E. Each Load Serving Entity shall prepare an annual disclosure report that aggregates the resource portfolios of the Load Serving Entity ~~and its affiliates~~.

F. Each ~~Load Serving Entity~~ load serving ESP shall prepare a statement of its terms of service that sets forth the following information:

1. Actual pricing structure or rate design according to which the customer

with a load of less than 1 MW will be billed, including an explanation of price variability and price level adjustments that may cause the price to vary;

2. Length and description of the applicable contract and provisions and conditions for early termination by either party;
3. Due date of bills and consequences of late payment;
4. Conditions under which a credit agency is contacted;
5. Deposit requirements and interest on deposits;
6. Limits on warranties and damages;
7. All charges, fees, and penalties;
8. Information on consumer rights pertaining to estimated bills, 3rd party billing, deferred payments, and rescission of supplier switches within 3 days of receipt of confirmation;
9. A toll-free telephone number for service complaints;
10. Low income programs and low income rate eligibility;
11. Provisions for default service;
12. Applicable provisions of state utility laws; and
13. Method whereby customers will be notified of changes to the terms of service.

G. The consumer information label, the disclosure report, and the terms of service shall be distributed in accordance with the following requirements:

1. Prior to the initiation of service for any retail customer,
2. Prior to processing written authorization from a retail customer with a load of less than 1 MW to change Electric Service Providers,
3. To any person upon request,
4. Made a part of the annual report required to be filed with the Commission pursuant to law.

5. The information described in this subsection shall be posted on any electronic information medium of the ~~Load Serving Entities~~load serving ESP.